

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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|---------------------------------|---|---------------------------------|
| SUWETTE RODRIGUEZ, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 22-cv-2763 |
| |) | |
| vs. |) | |
| |) | <u>NOTICE OF REMOVAL</u> |
| BURLINGTON COAT FACTORY |) | |
| WAREHOUSE CORPORATION, |) | |
| BURLINGTON COAT FACTORY OF |) | |
| TEXAS, INC. and BURLINGTON COAT |) | |
| FACTORY DIRECT CORPORATION. |) | |
| Defendants |) | |

Defendants, Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Direct Corporation (hereinafter collectively referred to as the “Burlington Defendants”), hereby remove this civil action bearing Index No. 804486/2022E from the Supreme Court of the State of New York, County of Bronx to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1446 and 28 U.S.C. §1332.

1. Plaintiff, Suwette Rodriguez, (hereinafter “Plaintiff” or “Rodriguez”), commenced this action in the Supreme Court of the State of New York, County of Bronx by filing a Civil Action Complaint (“Complaint”) on or about March 23, 2022. A copy of the Complaint is attached hereto as Exhibit “A” without admission or adoption.

2. Plaintiff’s Complaint filed in the Supreme Court of the State of New York, County of Bronx, with Index No. 804486/2022E was directed against Defendants, Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Direct Corporation.

3. Plaintiff seeks damages pursuant to injuries allegedly sustained as a result of a slip and fall which allegedly occurred at the Burlington Coat Factory Store located at 700 Exterior Street, Suite 302A, Bronx, New York 10451. (*See Exhibit "A"*).

4. The Plaintiff is a resident of the County of Bronx, State of New York. (*See Exhibit "A"*).

5. Plaintiff's current address is 3071 Park Avenue, Apt. 8C, Bronx, New York 10451 (Bronx County) and she has lived at that address since 1999, according to "PeopleMap Report (Premier)" provided by WESTLAW (Thompson Reuters).

6. Phone numbers associated with the Plaintiff include multiple phone numbers with area code "917", "347" and "646" which are all phone numbers issued in the State of New York, (typically for Bronx County), according to "PeopleMap Report (Premier)" provided by WESTLAW (Thompson Reuters).

7. Plaintiff's Social Security Number, 059-62-XXXX, was issued in the State of New York between 1978 and 1980, according to "PeopleMap Report (Premier)" provided by WESTLAW (Thompson Reuters).

8. For diversity purposes, it is well-established that the citizenship of an individual is equivalent to her domicile. Yonofsky v. Wernick, 362 F. Supp. 1005 (S.D.N.Y. 1973); Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile is defined by residence in fact along with the intent to remain there or to return when absent. Kaufman & Broad v. Gootrad, 397 F. Supp. 1054, 1055 (S.D.N.Y. 1975). An individual's residence at the time a lawsuit is commenced provides *prima facia* evidence of their domicile. Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile must be established by the totality of the evidence of a person's contacts with the state and intent to remain there. See, e.g., supra, Broadstone Realty Corp. v. Evans, supra.

9. Based on the totality of Plaintiff's aforementioned contacts with the State of New York, Plaintiff is a Citizen of the State of New York.

10. Defendant, Burlington Coat Factory Warehouse Corporation ("BCFW") is a foreign Corporation organized and existing under the laws of the State of Florida which has its principal place of business located at 1830 Route 130 North, Burlington, NJ 08016. Defendant, BCFW is a citizen of the State of Florida and a citizen of the State of New Jersey and is not a citizen of the State of New York.

11. Defendant, Burlington Coat Factory of Texas, Inc. ("BCFT") is a foreign Corporation organized and existing under the laws of the State of Florida which has its principal place of business located at 1830 Route 130 North, Burlington, New Jersey 08016. Defendant BCFT is a citizen of the State of Florida and a citizen of the State of New Jersey and is not a citizen of the State of New York.

12. Defendant, Burlington Coat Factory Direct Corporation ("BCFDC") is a foreign Corporation organized and existing under the laws of the State of New Jersey which has its principal place of business located at 1830 Route 130 North, Burlington, NJ 08016. Defendant BCFDC is a Citizen of the State of New Jersey and is not a citizen of the State of New York.

13. Pursuant to Plaintiff's Complaint (Exhibit "A", Para. 47) by reason of Defendants' alleged negligence, Plaintiff was allegedly caused to sustain severe and serious injuries and was required to seek and obtain medical care and attention in an effort to cure and alleviate same and, upon information and belief will be compelled to do so in the future.

14. Based on the alleged damages averments contained in the Complaint (Exhibits "A", Paras. 47), logically the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000) exclusive interest and costs as this case allegedly involves serious and allegedly ongoing physical injuries.

15. This Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

16. Since Plaintiff and Defendants are citizens of different states, this dispute involves controversies between citizens of different states and therefore is removable pursuant to 28 U.S.C. §1441.

17. Pursuant to 28 U.S.C. § 1446(a) this Notice of Removal is filed in the United States District Court for the Southern District of New York, which is the District in which the State Court Action is pending.

18. This Notice of Removal is timely pursuant to 28 U.S.C. §1446(b) and 28 U.S.C. §1446(b)(3) as it was filed within thirty (30) days after Defendant received a copy of the initial pleading (original Complaint at Exhibit “A”) setting forth a claim for relief upon which the action or proceeding is based.

19. Defendants will file this date a copy of this Notice of Removal with the Clerk’s Office of the Supreme Court of the State of New York, County of Bronx as required by 28 U.S.C. § 1446(c).

20. Defendants will this date give written notice of the filing of this Notice of Removal to Plaintiff as required by 28 U.S.C. § 1446(c).

WHEREFORE, Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Direct Corporation respectfully request that the above-entitled action now pending in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to this Court.

SPECTOR GADON ROSEN VINCI P.C.

Dated: April 4, 2022

/s/ Randi A. Wolf

RANDI A. WOLF, ESQUIRE

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Burlington Coat Factory Direct Corporation

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FOR THE SOUTHERN DISTRICT OF NEW YORK**

SUWETTE RODRIGUEZ,)
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Plaintiff,) C.A. No. 22-cv-2763
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vs.)
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BURLINGTON COAT FACTORY)
WAREHOUSE CORPORATION,)
BURLINGTON COAT FACTORY OF)
TEXAS, INC. and BURLINGTON COAT)
FACTORY DIRECT CORPORATION.)
)
Defendants)

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Notice of Removal on all parties by causing true and correct copies thereof to be sent U.S. Regular Mail, postage prepaid, on April 4, 2022 addressed to the following:

Mark J. Linder, Esquire
Harmon, Linder & Rogowsky
3 Park Avenue, Suite 2300
New York, NY 10016
Attorneys for Plaintiff

SPECTOR GADON ROSEN VINCI P.C.

Dated: April 4, 2022

/s/ Randi A. Wolf
RANDI A. WOLF, ESQUIRE